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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 28th October 2011

No. 9690—li/1(B)-100/2006-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th July 2011 in Industrial Dispute Case No. 23 of 2009 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of GRIDCO of Orissa Ltd. (Presently Orissa Power Transmission Corporation Ltd.), Bhubaneswar and its Workman Shri Pravakar Rath represented by O.S.E.B. Employees Federation was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 23 OF 2009

Dated the 30th July 2011

Present :

Shri Raghbir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Management of . . . First Party—Management
GRIDCO of Orissa Ltd.
(Presently Orissa Power
Transmission Corporation Ltd.),
Bhubaneswar.

And

Its Workman, Shri Pravakar Rath,
S/o Late Bhaskar Rath, . . . Second Party—Workman
At Sarakana Sasan, P.O. Sarakana,
Dist. Khurda.

Appearances :

Shri Anil Kumar Sahoo, . . . For the First Party—Management
 Dy. Manager (HRD) IR, OPTCL.

Shri Pravakar Rath . . . For the Second Party—Workman himself

AWARD

The Government of Orissa in the Labour & Employment Department, in exercise of powers conferred upon it by sub-section (5) of Section 12 read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act 1947 (14 of 1947) (for short, 'the Act') have referred the following dispute for adjudication vide their order communicated under memo No.10474 (5)—li/1(B)-100/2006-LE., dated the 20th November 2009 :

"Whether the demand made by the O.S.E.B. Employees Federation for grant of three advance increments to Shri Pravakar Rath alongwith promotion to the post of Clerk-A with effect from the date of declaration of the result of the 6th Field Accounts Examination is legal and/or justified ? If so, what relief Shri Rath is entitled to ?"

2. There is no dispute between the parties that the second party workman was initially appointed as a Khalasi under the erstwhile management of Odisha State Electricity Board (O.S.E.B.) which was subsequently taken over by the GRIDCO. The workman next got promotion to the post of Meter Reader and thereafter he joined as a Bill Assistant on 7-1-1974. Subsequently, he held the post of Junior Accountant, Accountant, Junior Manager (Finance) and Assistant Manager (Finance) and has now retired as Assistant Manager (Finance). It is also not in dispute that as per the Odisha Electricity Reform (Transfer of Transmission & Related Activities) Scheme, 2005 the Transmission Undertakings of GRIDCO including its assets, proceedings and personnel have been vested with M/s Odisha Power Transmission Corporation Ltd. (O.P.T.C.L.) with effect from the 9-6-2005. The O.P.T.C.L. being the successor of GRIDCO is therefore, arrayed as the first party in this case.

3. The pleadings in the claim statement, in short, is that at the relevant time the workman was in Clerk-B grade and as such it was compulsory on his part to pass Accounts Examination to be eligible for promotion to Clerk-A grade. In order to appear in the 6th Filed Accounts Examination scheduled to be held on 27th and 28th December 1974 he had made an application and he was allotted Roll No. 312, but the Superintending Engineer, Electrical Circle, Bhubaneswar who was authorised to conduct the examination for the staff who were working within his Circle did not allow the workman to appear in the examination. No reason was intimated to the workman. Being aggrieved, the workman made his first representation on 7-1-1975 and subsequently on several occasions. He demanded that the authority should treat him as a candidate having become successful in the Accounts Examination held in December, 1974 and to give him the financial benefit of three advance increments as well as promotion to Clerk-A grade, but there was no response from the management. There was another Departmental examination of a higher grade held on 29-12-1982 which the workman had appeared and came out successful and on that basis he was promoted to the post

of Junior Accountant which is next higher post to Clerk-A. Even after this promotion the workman made representations with prayer to refix his pay in the post of Junior Accountant deeming that he was in Clerk-A post immediately before he got the promotion to the post of Junior Accountant.

4. In the written statement the management has contended that the Accounts Examination was introduced by the management with a view to improving efficiency amongst the Accounts Staff. Passing of Accounts Examination was never made a condition precedent for promotion to the post of Clerk-A. That apart, as per the recommendations of the Central Wage Board for Electricity Undertakings which was adopted by the erstwhile O.S.E.B. an employee having experience of three years as Clerk-B was only eligible to be promoted to the post of Clerk-A. Furthermore, the erstwhile management in its Board meeting held on 2-8-1978 decided that an employee in the cadre of Clerk-B who has not completed one year of service in that cadre as on the first day of the month in which the Accounts Examination is held will not be allowed to appear in the Accounts Examination. This decision was made effective with effect from the 21st January 1973. Since the second party did not complete one year of service in the cadre of Clerk-B he was not eligible to appear in the Accounts Examination held, December, 1984.

On the financial benefit in the shape of three advance increments, the management takes the plea that such benefit was allowed to only those who had passed the examination prior to 30-6-1971. That, apart that benefit was applicable to employees in clerical cadre only. The second party after getting the promotion to the post of Junior Accountant was no more in the clerical cadre and he was brought to the Audit and Accounts Cadre which is separate and distinct from clerical cadre. On the second party's assertion that had he been allowed to appear in the Accounts Examination in the year 1974 he would have come out successful, it is contended that such assertion is imaginary. It is contended that the second party was never entitled to get the financial benefit. On the claim that the second party's pay should be refixed in the post of Junior Accountant taking into account his pay in the promotional post of Clerk-A, it is contended that this is merely a speculation in as much as, promotion to the post of Clerk-A depends upon the availability of vacancy and eligibility of the employee concerned.

On the maintainability of the reference the first party has taken several stands. According to the first party, the dispute raised is grossly belated. The second party is not a 'workman' in as much as the posts he had held as Junior Accountant, Accountant, Junior Manager (Finance) and Assistant Manager (Finance) belong to Supervisory category and his duties were of managerial and/or administrative nature. It is further contended that the dispute raised is not an 'industrial dispute' as defined in Section-2 (k) of the Act.

5. The workman in his rejoinder has taken the stand that the decision of the Board taken in its meeting dated 2-8-1978 making completion of one year of service in the post of Clerk-B as mandatory to appear in the Accounts Examination was not in force when the cause of action arose and the management could not have made that decision applicable for the Accounts Examination held in 1974.

6. The following issue is settled :—

ISSUE

“Whether the demand made by the O.S.E.B. Employees Federation for grant of three advance increments to Shri Pravakar Rath alongwith promotion to the post of Clerk -A with effect from the date of declaration of the result of the 6th Field Accounts Examination is legal and/or justified ? If so, what relief Shri Rath is entitled to ?”

7. The second party examined himself as W.W. No.1 and exhibited documents marked Exts. 1 to 20. On behalf of the first party its Deputy Manager (HRD), IR is examined as M.W. No. 1 and documents have been marked as Exts.A to F from its side.

FINDINGS

8. *Issue No. (i)*— As per the terms of the reference it is to be adjudicated as to whether the second party is entitled to get three advance increments along with promotion to the post of Clerk-A with effect from the date of declaration of the result of the 6th Field Accounts Examination held in December, 1974. But, no materials have been placed before this Tribunal to support the claim that merely on declaration of the result of the Accounts Examination an employee in Clerk-B grade becomes eligible for three advance increments with effect from the date of the declaration of the result and also he gets promoted to the post of Clerk-A with effect from the date of the declaration of the result. The second party has relied on a set of Rules called “Rules for Accounts Examination of the L.D. Clerks in Circle, Divisional and Subdivisional Offices” (for short, ‘the Rules’) which is marked as Ext.1. Rule-1 lays down, *inter alia*, that the Accounts Examination will be conducted once a year as may be convenient to the Financial Advisor and the Chief Accounts Officer and the examination will be generally held in the month of August. Rule-2 lays down that the examination is open to all the Lower Division Clerks attached to the Circle, Divisional and Subdivisional Offices of the O.S.E.B. Rule-3 lays down that the examination is compulsory for all the Lower Division Clerks attached to the Circle, Divisional and Subdivisional Offices. Rule-7 is to the effect that the names of the candidates willing to appear in the examination will be intimated by their respective heads of offices to the Financial Advisor and Chief Accounts Officer during the month of April each year. Rule-11 contemplates that the successful L.D. Clerks employed in the Account Section in the Circle, Divisional and Subdivisional Offices will be sanctioned three advance increments in their usual scale from the date of passing the examination.

9. Nowhere in the Rules it is contemplated that all the successful L.D. Clerks will be entitled to three advance increments from the date of passing the examination and they will get promotion to the post U.D. Clerks from the date of passing of the examination. Rather, Rule-11 in clear terms lays down that the L.D. Clerks who pass the Accounts examination and who are employed in the Accounts Section in the Circle, Divisional and Subdivisional Offices will be sanctioned three advance increments from the date of passing the examination. The second party has neither pleaded nor adduced evidence to the effect that as L.D. Clerk/Clerk-B he was employed in Accounts Section either in the Circle, Divisional or Subdivisional Office.

10. But, the management does not take the stand that the second party having not been employed in the Accounts Section is not entitled to get the benefit of the advance increments. Rather, it has taken the plea that the financial benefit of three advance increments used to be allowed to only those employees who had passed the Accounts examination prior to Dt. 30-6-1971. On this contention the second party has stated in his rejoinder that in pursuance of common order passed in O.J.C. No. 3508 of 1988 and O.J.C. No. 4115 of 1989, the O.S.E.B. issued Office Order No. 26745, Dt. 20-10-1993 (Ext.6) to the effect that the successful candidates who were debarred from getting the benefit of three advance increments after passing the Accounts examination would be eligible to get the benefit with effect from the 1-7-1971 as usual in their usual scales of pay from the date of passing the Accounts examination. Thus, according to the second party, the eligible employees were allowed to get three advance increments even if they had passed the Accounts examination after Dt. 30-6-1971. This position is not refuted by the management. But, M.W. No.1 has stated that subsequently the Board of Directors in its meeting held on 31-5-1994 have resolved that the benefit of allowing three advance increments shall be withdrawn with effect from the 31-5-1994. In this regard, the management has exhibited the Office Order No. 22313, Dt. 21-9-1995 which is marked Ext.C. The relevant portion of the order which is in Para. 5 of Ext.6 runs as follows :—

"After careful consideration of the whole matter the Board in its 337th meeting held on 31-5-1994 has withdrawn the benefit of advance increments as allowed by the Rule-11 of the said rules, deleted the said Rule-11 and also revoked this Office Order No. 26745, Dt. 20-10-1993. In pursuance to the said decision the benefit of three advance increments to L.D. Clerks or any other employee under the said Rule-11 including any clarification issued thereon from time to time, shall cease to continue and stand withdrawn with effect from the 31-5-1994."

Thus, it is shown by the management that the financial benefit stands withdrawn with effect from the 31-5-1994. This position is not controverted by the workman.

11. So far the promotion aspect is concerned, the management's plea that an employee having experience of three years as Clerk-B is only eligible to be promoted to the post of Clerk-A is not specifically denied by the workman in his rejoinder. The workman admits it in Para. E of his rejoinder and further contends that he has no objection to accept the promotion to the post of Clerk-A after completion of three years of service in the post of Clerk-B. In view of such admission it is to be held that an employee in the post of Clerk-B cannot be considered for promotion from the date of declaration of the result of the Accounts Examination if he has not completed three years of service as Clerk-B.

Thus, it is found from the materials available on record that under Rule-11 of the Rules, the L.D. Clerks who have passed Accounts examination, if employed in the Accounts Section in the Circle, Divisional and Subdivisional Offices, are entitled to get three advance increments in their usual scale from the date of passing the examination. Even if an L.D. Clerk comes out successful in the Accounts Examination he cannot claim three advance increments solely on his passing the examination unless and until he is employed in the Accounts Section in the Circle, Divisional and

Subdivisional Offices. Once he is posted in the Accounts Section he will be entitled to get the advance increments from the date of passing the examination. In absence of any other materials contray to the provisions laid down in Rule-11 of the Rules, this tribunal is to give respect to the Rules and the entitlement of the workman is to be considered in the light of the Rules. As already stated the workman has not proved that as a Clerk-B/L.D. Clerk he was ever posted in the Accounts Section in the Circle, Divisional or Subdivisional Offices. Therefore, even if any presumption is raised in his favour that he would have passed in the 6th Field Accounts Examination he cannot be said to be entitled to get advance increments from the date of pronouncement of the result of that examination.

12. So far the promotion aspect is concerned, it is also admitted by the workman that an L.D.Clerk/Clerk-B is not entitled to promotion till he completes three years of service in that cadre. Admittedly, the date of joining of the workman in the post of Clerk-B is Dt. 7-1-1974. The Accounts Examination was held in the month of December 1974. It does not transpire as to when the result of the examination was declared. Even assuming that it was declared in 1975, the workman could not have got promotion from the date of declaration of the result as he complted three years of service in the post of Clerk-B only on 7-1-1977. Therefore, the demand made by the Employees' Federation for grant of advance increments as well as promotion from the date of declaration of the result of the Accounts Examination is neither legal nor justified ?

13. The workman's plea is that in order to get promoftion to the post of U.D. Clerk/Clerk-A, and L.D. Clerk/Clerk-B is required to pass the Accounts Examination. This can be construed from Rule-5 readwith Rule-3 of the Rule. Rule-3 lays down that the Examination is compulsory for all the L.D. Clerks. Rules-5 contemplates that persons who are already in the post of U.D. Clerk and above before the introduction of the Rules shall have to pass Accounts Examination in three chances failing which they will make room for the passed hands. But, there is no contemplation in the Rules that an L.D.Clerk will get promotion to the post of U.D. Clerk with effect from the date he passes the examination. In the case at hand, the workman had intended to appear in the 6th Field Accounts Examination which was conducted in the very first year of his service as Clerk-B. It appears, because of some misinformation he was not permitted to sit in the examination even though a roll number was allotted to him. It is sufficiently proved by the workman that he was not permitted to sit in the examination on a wrong notion that at the relevant time he was working as a "Meter Reader" which was not in the cadre of L.D. Clerk. Therefore, it is to be held that due to the latches on the part of the management the second party could not appear in the 6th Field Accounts Examination. But, in view of the discussions made in the foregoing paragraphs it cannot be said that if he had appeared in the examination and came out successful he would have been entitled to get three advance increments alongwith promotion to the higher post immediately after the declaration of the result. Rather, he could not have got promotion at least till Dt. 7-1-1977. In cross-examination the workman has admitted that he had not appeared in any of the subsequent Accounts Examinations till he got appointed as Junior Accountant in 1982. He takes the plea that since he had been raising a dispute over the illegal denial to him to appear in the 6th Field Accounts Examination he did not appear in the subsequent Accounts Examinations. This defence does not appear to be justified. As per the Rules the Accounts Examination is to be conducted once a year. As per the Board's decision the

wokman was not entitled to get promotion during the first three years of service as Clerk-B. Therefore, if he was unfortunate not to appear in the 6th Field Accounts Examination held in 1974 there was no justification on his part not to appear in the subsequent Accounts Examinations. It is not pleaded that no such Examination was held in the year 1975 or 1976. If he had passed the examination held in 1975 or 1976 he could have got promotion on completion of three years of service as Clerk-B, if at all there was any occasion for promotion. It is also not pleaded as to when the employee immediately below him in the seniority list got promotion to the post of U.D Clerk/Clerk-A. The management has rightly contended that promotion to the higher post was not automatic as it was subject to availability of vacancy besides seniority and suitability of the employee concerned. In the absence of pleadings and evidence as to when the second party would have got promotion if he had passed the Accounts Examination held in 1974, it is not possible on the part of this Tribunal to come to a definite conclusion that at a particular point of time the second party could have got promotion but for the alleged illegal deprivation of appearing in the examination.

14. The workman claims financial benefit as well as promotion to the post of Clerk-A taking the plea that if there were no such illegal denial he would have definitely come out successful in the Examination. To strengthen the contention he has cited as to how he became successful in a more difficult Examination held in the year 1982 and got promoted to the post of Junior Accountant. The management claims that this contention is quite imaginary. This Tribunal is not ready and prepared to accept this contention because he had appeared in the Departmental Examination in 1982 which was about eight years after his joining as Clerk-B and it is quite presumable that he acquired departmental experience as well as got ample time to prepare for that examination. On the other hand, he did not come forward to appear in any of the Accounts Examinations held subsequent to the 6th Field Accounts Examination for reasons not duly explained. Therefore, this Tribunal is not in a position to determine his entitlement to get promotion during the period of his service in Clerk-B post.

15. It is not proved that a Clerk-B/L.D. Clerk is entitled to get advance increments merely on the passing of the Accounts Examination. As already stated, the Rules lay down that an L.D. Clerk employed in the Accounts Section will be sanctioned three advance increments in their usual scale from the date of passing the Examination. The workman's plea that he should be presumed to have passed the Accounts Examination of the 1974 is found to be unacceptable. Therefore, he is not entitled to get the financial benefit. That apart, he has failed to prove that he was employed in the Accounts Section in the Circle, Divisional or Subdivisional Offices at any point of time till he got promotion as Junior Accountant. According to the management, the post of Junior Accountant is not in the clerical cadre as it comes in a distinct cadre called "Audit and Accounts Cadre". There is no denial to this plea. Therefore, even if the second party on being promoted to the post of Junior Accountant was posted in the Accounts Section he cannot get the financial benefit under Rule-11 of the Rules.

In view of the observations made above, the workman is not entitled to get promotion to the post of Clerk-A along with three advance increments as contemplated under the Rules and the issue is answered against the workman.

16. On the maintainability of the reference, it is to be stated that none of the grounds taken by the management is found to be tenable. Though it is claimed that the workman raised the dispute at a grossly belated stage, it is not denied by the management that starting from Dt. 7-1-1975 the

workman had been making representations to the management claiming the benefits, but the management has not shown to have made any communication to the workman refusing to accept his claim. So, the plea of long delay cannot be made available to the management. It is contended that the second party is not a 'workman' in as much as the posts he had held as Junior Accountant, Accountant, Junior Manager(F) and Assistant Manager (F) belong to Supervisory category and his duties were of managerial/administrative nature. No doubt, when the dispute was raised the workman was in the post of Assistant Manager (Finance) but the dispute is related to the period when the workman was in the post of Clerk-B. It is not pleaded that as Clerk-B the second party was in supervisory category or discharging managerial/administrative duties. Since the second party was in the clerical cadre at the relevant time this Tribunal is of the considered view that he is a 'workman' for the purpose of the dispute raised by him and the reference is maintainable.

It is then contended that the dispute raised is not an 'industrial dispute' as defined in Section 2 (k) of the Act but there is no clarification as to why it cannot be said to be an 'industrial dispute'. The dispute relates to the terms of employment or with the conditions of labour of the workman and, therefore, it is an industrial dispute. Thus, the reference is found to be maintainable.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH

30-7-2011

Presiding Officer

Industrial Tribunal

Bhubaneswar

RAGHUBIR DASH

30-7-2011

Presiding Officer

Industrial Tribunal

Bhubaneswar

By order of the Governor

T. K. PANDA

Under-Secretary to Government